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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 818

PAUL S. WOOLLEY,

Petitioner,

—v.—

EASTERN AIR LINES, INC., a Delaware Corporation,

Respondent.

BRIEF OF RESPONDENT EASTERN AIR LINES, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

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April 20, 1960

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The Decisions Below

This case has been decided twice by the United States District Court for the Southern District of Florida, the first time in 1956 (*R. 9-10*) and *the second time* on May 18, 1959 (R. 105-106). Neither decision of the District Court has been reported.

This case likewise has been decided twice by the United States Court of Appeals for the Fifth Circuit, the first decision (see R. 10) being reported at 250 F. 2d 86 (1957) and the second decision (see R. 112-116) being reported in 273 F. 2d 615 (1960).

This Court denied certiorari with respect to the first decision of the Court of Appeals in this case. 356 U. S. 931 (1958).

Statutes Involved

Although *res judicata* bars the attempt of Woolley to relitigate the issues which were finally settled in the first appearance of this case, the following statutory provisions relate to the merits of such issues and will be referred to in this brief:

Railway Labor Act, Section 3, First (m), 44 Stat. 578, as amended by 48 Stat. 1189, 45 U. S. C. 153:

> "(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute."

Railway Labor Act, Section 204, 49 Stat. 1189, 45 U. S. C. 184:

> "The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief

operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act."

Questions Presented

Woolley has not set forth in his petition for certiorari the questions which he deems to be presented for review. Respondent believes that the issues are:

1. Whether Woolley may relitigate in this action, started in 1959, issues which were finally adjudicated by the District Court in 1956, such adjudication being affirmed by the Court of Appeals in 1957, certiorari being denied by this Court in 1958.

2. Whether there is any basis for reconsideration of the issues previously adjudicated even if relitigation were possible.

Respondent will also show hereinafter that the petition for certiorari should be denied for failure to comply with this Court's Rules.

Statement of the Case

The issues of this case (which will hereinafter be referred to as the "second *Woolley* case") have been before this Court previously and have been finally decided in *Woolley* v. *Eastern Air Lines, Inc.*, 250 F. 2d 86 (5th Cir. 1957), *cert. denied*, 356 U. S. 931 (1958) (hereinafter referred to as the "first *Woolley* case"). Petitioner has presented the Court with no basis for further consideration of such issues, and therefore Eastern Air Lines, Inc. (hereinafter referred to as "Eastern") respectfully submits that the petition for certiorari should be denied and dismissed.

The facts of this case are well summarized in the Court of Appeals decision in the first *Woolley* case as follows (250 F. 2d 87-89):

> "Appellant Woolley had been laid off in 1950 by Eastern Air Lines for alleged unsafe flying practices. After considerable negotiations conducted on his behalf by the Air Line Pilots Association, his bargaining representative, the company agreed to take him back after six months suspension on condition that he sign a letter of resignation which could be accepted by Eastern's Vice President of Operations 'at any time in the future, should you personally feel that I am not handling my job in the proper manner.'
>
> "On February 20, 1956, Eastern wrote a letter to Woolley purporting to accept the resignation by using the words contained in his letter of July 25, 1950, 'I personally do not feel that you have been handling your job in the proper manner.' Thereupon Woolley replied by stating that he had been discharged without the benefit of the grievance procedures provided in the collective bargaining agreement, specifically an investigation and hearing. In response to this Eastern

replied that this was the acceptance of a resignation rather than a discharge, but that the writer would talk to Woolley two days later, and then stated that the company's action had been 'based in large part on unsafe flying of a certain flight and Woolley's 'handling' of another flight. Woolley went to the office of the vice president Shannon and there discussed everything he cared to discuss with him about the matter. He made no request for any other or further hearing or investigation and he did not ask for any further specification of charges. On March 2nd he received a further letter from Shannon, adhering to the original action.

"Thereafter Woolley asked the Air Line Pilots Association to take the matter to the System Board of Adjustment, which was done. A full hearing was had before the Board, which resulted in a decision favorable to the air line.

"Woolley thereafter filed this suit joining the Eastern Air Lines, the Air Line Pilots Association, International, and the individual members of the Board of Adjustment, as defendants. In it he sought a declaratory judgment determining his rights and a mandatory injunction requiring the Board of Adjustment to 'cancel and discharge' their adverse order and requiring the air line defendant to reinstate him with back pay and benefits 'unless and until the said Eastern Air Lines, Inc. shall have filed an appropriate order of discharge for cause, and the defendant Eastern Air Lines Pilot System Board of Adjustment has had a complete and adequate hearing within the confines of its jurisdiction and either granted or denied the grievance complained of, if any, for cause.'"

The trial court in the first *Woolley* case granted Eastern's motion for summary judgment, the Court of Appeals affirmed, certiorari being denied by the Supreme Court.

The second *Woolley* case was filed by Woolley initially in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida (R. 4), but was removed by Eastern to the United States District Court for the Southern District of Florida (R. 1). Eastern filed a motion to dismiss (R. 103), raising the defenses of *res judicata*, estoppel by judgment, and estoppel by verdict, basing such defenses on the decisions of the District Court, the Court of Appeals and the Supreme Court in the first *Woolley* case. The trial court sustained Eastern's motion to dismiss, and the Court of Appeals affirmed (R. 112-116, 273 F. 2d 615 (1960)).

Summary of Argument

All substantive issues presented by the petition for certiorari have been adjudicated in the first *Woolley* case. As the Court of Appeals held in the second *Woolley* case (R. 115):

> ". . . on the simplest principles with which the law has to deal, the judgment pleaded in bar is a complete defense to the plaintiff's suit . . ."

While Woolley appears to argue (his petition, pp. 17, 19) that the Federal courts did not have jurisdiction in the first *Woolley* case, he himself invoked that jurisdiction and it is clear (and Woolley admits—his petition, p. 17) that the courts had jurisdiction pursuant to diversity of citizenship. Hence, all issues were before the courts and Woolley is barred from further litigation of the same issues in this case.

Numerous court decisions, including *Union Pacific Railroad* v. *Price*, 360 U. S. 601 (1959), hold unanimously that

an employee subject to the Railway Labor Act may not sue his employer in the courts for wrongful discharge after he has submitted a demand for reinstatement and back pay to an Adjustment Board created under the Act and has received an adverse decision of such Adjustment Board. Contrary to Woolley's contention, there are no court decisions inconsistent with that holding.

Woolley's petition for certiorari does not comply with this Court's Rules and for that additional reason should be denied.

ARGUMENT

I.

This action is barred by *res judicata*.

It is basic and unchallenged law that issues which have been litigated and adjudicated cannot be revived and relitigated between the same parties. *Commissioner of Internal Revenue* v. *Sunnen*, 333 U. S. 591, 597 (1948); *Angel* v. *Bullington*, 330 U. S. 183, 192-193 (1947); *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U. S. 371, 378 (1940); *Peckham* v. *Family Loan Co.*, 196 F. 2d 838, 840-841 (5th Cir. 1952). It is further settled, by the same authorities and many others, that the doctrine of *res judicata* applies not only to issues actually raised in the prior litigation, but also to those issues which could have been raised and settled as part of the same proceeding.

All the issues raised in the second *Woolley* case actually were raised and settled in the first *Woolley* case. Woolley's attempt to give old issues the appearance of new ones is transparent; but even if there were new issues, they could not be successfully prosecuted in this action in view of the obvious opportunity which Woolley had to present all of his contentions in the first *Woolley* case.

Woolley says (petition, p. 2) that the decision of the Court of Appeals in the second *Woolley* case is "in conflict with the opinion of the United States Supreme Court" in *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653 (1953) and *Slocum* v. *Delaware L. & W. R.R.*, 339 U. S. 239 (1950).

It is apparent that Woolley is not referring to the second *Woolley* decision, which he now asks this Court to reverse, for the Court of Appeals in the second *Woolley* case held simply that his action was barred by *res judicata*. There is no conflicting rule of *res judicata* in the *Koppal* case or in the *Slocum* case.

Woolley further says (petition, p. 2) that the Court of Appeals decision involves "an important question of Federal law which has not been but should be settled by this Court." Again, Woolley obviously is not referring to the second *Woolley* decision, as the rule of *res judicata* there announced has long been established, and repeatedly followed by this Court.

Woolley also says (petition, p. 2) that the decision of the Court of Appeals is "in conflict with the applicable decisions of this Court." Clearly there is no conflict between the doctrine of *res judicata* announced by the Court of Appeals and that uniformly followed by this Court.

Thus, it is clear that Woolley's present attack on the "decision" of the Court of Appeals is all directed against the first *Woolley* decision—not the one which he asks this Court to review. Certainly this Court could not allow such a belated collateral attack on a decision which has been concluded by denial of certiorari.

Woolley's claimed basis for avoiding *res judicata* is difficult to understand and impossible to support. He appears to say (petition, pp. 17, 19) that the Federal courts did

not have jurisdiction in the first *Woolley* case and therefore the first *Woolley* decision is without effect. Yet, Woolley himself invoked the jurisdiction of the Federal court in the first *Woolley* case, and he admits (petition, p. 17) that the Federal court had jurisdiction "on the usual ground of diversity of citizenship"; and he appears to say only that the Federal court was obligated to follow Florida law (petition, p. 18). If there had been a misapplication of Florida law in the first *Woolley* case, such an error would not have deprived the Federal court of jurisdiction; and any attack on the correctness of the decision would have to be made in *that case*. *Res judicata* would prevent any collateral attack in *this case*. However, as we shall show in the next portion of this brief, there was no misapplication of Florida law, and the first *Woolley* decision is entirely correct and is supported by the recent decision of this Court in *Union Pacific Railroad* v. *Price*, 360 U. S. 601 (1959).

II.

Even if it were not barred by *res judicata*, Woolley's attack on the first *Woolley* decision is without merit.

In the first *Woolley* decision, the Court of Appeals held in part as follows (250 F. 2d 90):

> "It is to be borne in mind that no air line pilot is required by the collective bargaining agreement or by the law to take his dispute to the system board of adjustment. The two Supreme Court decisions in Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S.Ct. 577, 94 L.Ed. 795, and Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089, make clear the election that is available to the employe. If he determines that he will treat his grievance as involving a determination of rights as an employe under the

bargaining agreement *and asserts his rights to be retained as an employe he must go to the board for redress.* If he accepts the action of the carrier as a final discharge he may sue in court for a breach of the contract of employment. *He may not do both.*" (Emphasis added.)

After citing numerous other authorities holding that the Adjustment Board decision is binding under such circumstances, the Court of Appeals met Woolley's contention that the Adjustment Board had no jurisdiction by saying (250 F. 2d 91):

> "There can be no doubt here that the Board had jurisdiction of the dispute, at least as to any challenge by appellant because he invoked its jurisdiction."

While holding that no cause of action was stated by Woolley's complaint, the Court of Appeals went further (250 F. 2d 91-92) and held, contrary to Woolley's contentions:

1. That there was extensive evidence "which fully warranted the Board's decision that the air line had good and sufficient reason for accepting the resignation."

2. That the "trial court equated the finding of the Board that there was good and sufficient reason to accept the resignation with a finding that ample grounds existed for a discharge," and upheld that Board finding.

3. That "We think this decision was correct," and the evidence was sufficient "to support a finding of adequate grounds for discharge."

4. That "There is no merit in the contention that the issue of the validity of his discharge . . . was not before the Board."

5. That "Finding as we do that the Board of Adjustment had full jurisdiction invoked by appellant himself, and that there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack, the decision of the Board was final and binding and may not be reviewed."

6. That if the Board decision were subject to review, "the finding of the trial court that the decision of the Board was fully supported and thus was not reviewable on the merits is right."

Woolley's apparent contention (petition, p. 8) that the Adjustment Board did not rule on the merits of his discharge is answered not only by the square ruling of both lower courts in the first *Woolley* case, but also by this Court's analysis of the Adjustment Board decision involved in *Union Pacific Railroad* v. *Price*, 360 U. S. 601, 606-607 (1959). Certainly where the issue of discharge was presented to the Adjustment Board, as it was in Woolley's case, the Board's "unqualified denial of the claim necessarily implied" (360 U. S. at 607) a ruling that Woolley's discharge was proper.

The lower court decisions in the first *Woolley* case are fully supported by the decision of this Court in the *Price* case. This Court there held (360 U. S. at 617) that "The respondent's submission to the Board of his grievances as to the validity of his discharge precludes him from seeking damages in the instant common-law action." This Court further noted (360 U. S. at 617):

> "So far as appears, all of the Court of Appeals and District Courts which have dealt with this problem have reached the conclusion we reach here. To say that the discharged employee may litigate the validity of his discharge in a common-law action for damages after

> failing to sustain his grievance before the Board is to say that Congress planned that the Board should function only to render advisory opinions, and intended the Act's entire scheme for the settlement of grievances to be regarded 'as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision * * * [a contention] inconsistent with the Act's terms, purposes and legislative history.'"

Woolley argues that there is a difference between the National Railroad Adjustment Board and a System Board of Adjustment such as is here involved. However, the only difference which he demonstrates (petition, pp. 12-17) is that Congress conferred special jurisdiction on Federal courts to enforce—even in non-diversity cases—decisions of the National Railroad Adjustment Board, whereas Federal courts have jurisdiction of System Board decisions only in case of diversity. Congress has made no other distinction, as it imposed on the carriers and employees the "duty" to establish a "board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act" (Railway Labor Act, Section 204). In the *Price* case, *supra*, this Court cited certain air carrier cases in support of its conclusion that Adjustment Board decisions upholding discharge are final and binding and preclude litigation. Of course, such air carrier cases involved System Boards, since there is no National Air Transport Adjustment Board.

In *Transcontinental & Western Air* v. *Kop* [illegible], 345 U. S. 653, 659 (1953), this Court pointed out that the System Board procedure is "comparable" to that of the National Board. It further said (345 U. S. at 660) that "the employ-

ment contract conforms to the policy of the Railway Labor Act and the Act provides a procedure for handling grievances so as to avoid litigation and interruptions of service." In *Edwards* v. *Capital Airlines, Inc.*, 176 F. 2d 755, 760 (D. C. Cir. 1949), the court said with respect to a System Board of Adjustment that the "right to create it was reserved to the parties by the original Act, and a duty to create it was imposed, by a later amendment . . . This gives it a public character that cannot be ignored." Numerous other cases, including those cited by this Court in the *Price* case, proceed on the uniform assumption that a System Board is the equivalent of the National Railroad Adjustment Board.

Woolley now seemingly contends (petition, pp. 20-27) that the decisions of the lower courts in the first *Woolley* case are inconsistent with the *Koppal* decision in that the doctrine of *Koppal* would require "exhaustion of administrative remedies" under Florida law prior to court action, whereas appeal to the Adjustment Board (under the first *Woolley* decision and the *Price* decision) would preclude the judicial remedy. That argument was presented in the first *Woolley* case and provides no basis for further consideration of the merits of Woolley's case here. It should be sufficient to note that Koppal did not exhaust his *intra-company* remedy—the preliminary grievance procedure—and there is no suggestion in the *Koppal* case that the "administrative remedy" which must be exhausted includes the Adjustment Board or that if Koppal had carried his case to adverse decision by the Adjustment Board he could nevertheless have relitigated the same issues in court.

There is no inconsistency between any of the decisions cited by Woolley. The uniform pattern of decision is that a discharged employee subject to the Railway Labor Act may, after exhausting any administrative remedies to the

extent required by state law (*Transcontinental & Western Air* v. *Koppal, supra*), has an election either (1) to sue his employer for damages for wrongful discharge (*Moore* v. *Illinois Central R.R.*, 312 U. S. 630 (1941), as explained in the *Slocum* case, *supra*, and the *Koppal* case, *supra*) or (2) to take his case to the Adjustment Board seeking reinstatement and back pay (*Union Pacific Railroad* v. *Price*, and cases cited 360 U. S. at 616-617). "He may not do both." *Woolley* v. *Eastern Air Lines, supra*, 250 F. 2d at 90.

The decision of the Adjustment Board is not subject to judicial review except to the extent that questions of jurisdiction or procedural due process are involved. *Woolley* v. *Eastern Air Lines, supra*, 250 F. 2d at 92; *Sigfred* v. *Pan American World Airways*, 230 F. 2d 13, 17 (5th Cir. 1956); *National Airlines* v. *Metcalf*, 114 So. 2d 229 (1959). Here, as the Court of Appeals held in the first *Woolley* case, "there is no contention that the Board was not properly constituted or that there were other circumstances that would permit a collateral attack . . ." 250 F. 2d at 92.

Since all issues have been fully and properly decided contrary to Woolley's contentions, there is no possible basis for his collateral attack on the first *Woolley* decision, and this action is barred by *res judicata*.

III.

Woolley's petition does not comply with this Court's Rules.

Woolley's petition for certiorari fails to comply with this Court's Rules in the following respects:

(1) It does not state (Rule 23, 1 (b) (iii)):

"The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari."

(2) It does not state (Rule 23, 1 (c)):

"The questions presented for review, expressed in the terms of the case, but without unnecessary detail."

(3) It does not state (Rule 23, 1 (d)):

"The constitutional provisions, treaties, statutes, ordinances or regulations which the case involves, setting them out verbatim and citing the volume and page where they may be found in the official edition."

(4) It does not contain (Rule 23, 1 (e)):

"A concise statement of the case containing the facts material to consideration of the questions presented."

(5) It does not show (Rule 23, 1 (g)):

"the basis for federal jurisdiction in the court of first instance."

Therefore, respondent invokes the provision of this Court's Rules (Rule 23, 4) which states that:

"The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

CONCLUSION

In view of the foregoing considerations, the petition for certiorari should be denied.

Respectfully submitted,

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